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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. 71-1608

PEARCE JOHNSON, ET AL
Petitioners

v.

ROGERS C. B. MORTON, ET AL
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court is not reported and is set forth in Appendix C of the Petition. The opinion of the Court of Appeals for the Fifth Circuit is not reported and is set forth in Appendix A of the Petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether the Petitioners, Plaintiffs in the District Court, have standing under U.S.C. § 702 to review the action of the Secretary of Interior in approving the use of Federal funds under the Land and Water Conservation Fund Act of 1965, 16 U.S.C. §§460*l*-4 through 460*l*-11, for the purpose of matching funds from the

Texas Park Development Fund for the acquisition of a state park on Mustang Island.

STATUTES INVOLVED

In addition to the Land and Water Conservation Fund Act of 1965 (Appendix E of the Petition) and the Administrative Procedure Act (Appendix F of the Petition), the following state statutes are relevant to an understanding of this case and are reproduced in appendicies to this brief: Article 978f-3a, Vernon's Texas Penal Code (Appendix A); Article 6070h, Vernon's Texas Civil Statutes (Appendix B); Article 6081r, Vernon's Texas Civil Statutes (Appendix C).

STATEMENT

The statement contained in the Petition warrants clarification in the following respects.

Under the provisions of Article 978f-3a, Vernon's Texas Penal Code (Appendix A), the Parks and Wildlife Department is under the *policy* direction of the Parks and Wildlife Commission. The Commission consists of three members, one of whom is designated as chairman by the governor. A quorum for official business is two members. The Executive Director, appointed by the Commission is the chief executive officer of the Parks and Wildlife Department and performs the administrative duties of the department.

Article 6070h, Vernon's Texas Civil Statutes (Appendix B) establishes the Texas Park Development Fund to be used by the Parks and Wildlife Department for the acquisition of state park sites.

Article 6081r, Vernon's Texas Civil Statutes (Appendix C) designates the Parks and Wildlife Department as the state agency authorized to cooperate with the Federal government in the administration of the

Land and Water Conservation Fund Act of 1965, including the planning, acquisition, operation and development of the outdoor recreation resources of the state. This designation is in compliance with the mandate of § 460*l*-8(d)(1) of the Land and Water Conservation Fund Act of 1965.

On November 10, 1970, the Parks and Wildlife Commission decided to buy as much of the Wilson property on Mustang Island as they could pay for with state and federal funds. (R. 54-56; 515-516; 518) (Pl. Ex. #11) (R. 547).

The report that the Parks and Wildlife Department was short $1,000,000.00 in BOR funds to make the acquisitions in question was determined to be erroneous. (R. 519, 553).

In reversing the judgment of the District Court, the Court of Appeals for the Fifth Circuit held that Petitioners lacked standing to bring this action and that any alleged injury suffered by Petitioners was the result of action taken by the Parks and Wildlife Department and was properly cognizable by a Texas court not a federal court. (Petition Appendix A).

ARGUMENT

The Petitioners rely upon 5 U.S.C. § 702 as the basis for review of the action of the Secretary of Interior in approving the application of the Parks and Wildlife Department for federal funds to aid in the purchase of the Wilson property on Mustang Island. That provision reads as follows:

> "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."

This Court has held that persons have standing to obtain judicial review under this provision of the Ad-

ministrative Procedure Act only in those instances in which the challenged action causes those seeking review "injury in fact," and the interest injured is "within the zone of interests to be protected or regulated" under the laws which are claimed to have been violated. *Association of Data Processing Service Organizations v. Camp,* 397 U. S. 150 (1970); *Barlow v. Collins,* 397 U.S. 159 (1970). In both of these cases the plaintiffs alleged that the agency action had adversely affected their economic position and this Court found that they had standing to challenge the agency action which affected that economic position. Petitioners in the case sub judice have not alleged nor proved an economic injury. Indeed, their First Amended Complaint (Petition Appendix G) does not allege injury of any kind to the individual petitioners, nonetheless petitioners assert that they have been injured in the following respect:

> "Petitioners are users of state parks who reside in areas which allegedly would be deprived of needed parks by depletion of funds in the acquisition of Mustang Island. The Secretary's approval of the Mustang Island application adversely affects Petitioners' use of existing and proposed state park facilities, and they are, therefore aggrieved by the Secretary's unlawful action. Although this is true of all the Petitioners, this injury is most obvious in the case of Petitioner Walters. He resides in Polk County, Texas, near Lake Livingston. The Texas Parks and Wildlife Commission has considered acquiring land on Lake Livingston for a state park. The depletion of funds by the proposed acquisition of Mustang Island has caused the Commission to abandon its efforts to obtain a park site on Lake Livingston. This adversely affects Petitioner Walters' recreational interest as a user of existing park facilities on Lake Livingston which are already overcrowded." (Petition p. 9).

Reference to the testimony of the individual petitioners reveals that their injury is not as grievous as they would have us believe and in fact amounts to nothing more than a general dissatisfaction with the course of action chosen by the Commission.

Petitioner Walters testified at length about the crowded conditions of the recreational facilities around Lake Livingston. His testimony, at best, presents these points: his understanding was that the Commission would purchase and develop a park site on Lake Livingston; the park and recreational facilities at Lake Livingston are overcrowded; many people from Houston come to the Lake Livingston area; the crowding of the present facilities causes a law enforcement problem and a sanitation problem in Polk County; if more recreational facilities could be developed around Lake Livingston, it would be more enjoyable for him and his family; purchase of Mustang Island will prevent the Commission from developing park facilities at Lake Livingston.[1] (R. 650-654, 656-658, 661-672).

Petitioner Don Kennard, a State Senator from Fort Worth, Texas, testified that he is an avid canoeist and camper and has pursued those activities throughout the state. (R. 633, 635). The only injury he complains of is to his desire to see more parks in his area of the state and is reflected in the Record at 635 lines 20-25 and 636 lines 1-8:

> "Q As a private citizen, do you feel that your interest as a user of the recreational facilities of the State of Texas will be injured by the Mustang Island proposed acquisition?
>
> "A Yes, I certainly do.

[1]Petitioners fail to inform the Court that the Parks and Wildlife Department has in fact acquired the park site on Lake Livingston which petitioner Walters proselytized for so diligently.

"Q In what respects, Senator Kennard?

"A As a private citizen, as one who enjoys camping and the recreational facilities of the State of Texas, I feel that the area in which I live and which is most convenient to me should have adequate facilities for this very purpose. As it is today, the people close to where I live, Dallas, Fort Worth, have to go many miles to thoroughly and fully enjoy recreational facilities provided by the State of Texas."

This is the only testimony relating to an injury to the interest of Senator Kennard.

Petitioner Ben Atwell lives in Dallas County, Texas, and is a long-time member of the Texas House of Representatives. (R. 626). He has received several awards from conservation groups in recognition of his work in the field of conservation and water safety. (R. 627). He has engaged in boating, hunting, and camping activities and has visited several state parks scattered across the state. (R. 628). He is specifically interested in having more state parks oriented toward water activities located in his part of the state. (R. 631). According to his testimony, he will suffer no injury by virtue of the acquisition of Mustang Island, as reflected in the Record at pages 629 lines 24-25, 630 lines 1-2, 6-8:

"Q . . . as an enthusiast of outdoor recreation facilities. How would it affect you by locating this park down there that they are proposing on Mustang Island?

"A The only way I know how to answer that question is: as far as I'm personally concerned it would probably not have any effect at all."

Petitioner Pearce Johnson is Chairman of the Parks and Wildlife Commission and State Liaison Officer.[1]

---

[1]His designation as State Liaison Officer is meaningless in view of the provisions of Article 6081r, Vernon's Texas Civil

(R. 5). He testified that in his individual capacity he has used the parks and recreational facilities as a place to camp and stable his daughter's horses when she goes to horse shows. "Basically that is my reason for traveling in the state parks and I have used them a little bit otherwise." (R. 693-694). His testimony relating to his personal injury is found in the Record at 694 lines 21-25 and 695 lines 1-5:

> "Q Well, this proposed Mustang Island acquisition, will that injure your personal interest as a user of the State's facilities?
>
> "A Yes sir, it would.
>
> "Q In what respect?
>
> "A It would result in depriving me as a user, as everybody who is a user, of the facilities that rightfully should be scattered out throughout the State and it would cut down on the services that are afforded by our State Park System."

Basic to the question of standing is the long-established principle that one may only seek redress in the courts for wrongs done to them, not to others. *Virginia Railway v. System Federation #40,* 300 U.S. 515, 558 (1937); *Erie Railroad Co. v. Williams,* 233 U.S. 685, 697 (1914); *Moose Lodge #107 v. Irvis,* 40 U.S.L.W. 4715 (1972). It is clear from *Data Processing v. Camp* and *Barlow v. Collins* that economic injury to the individual is sufficient basis for standing. And, once the fact of economic injury to the individual is established, the injured person may argue the public interest in support of his contenttion that the agency action is wrongful, *Scripps-Howard Radio, Inc. v. F.C.C.,* 316

Statutes, which designates the Parks and Wildlife Department as the agency with authority to cooperate with the federal government under the Land and Water Conservation Fund Act.

U.S. 4 (1942); *F.C.C. v. Sanders Bros. Radio Station*, 309 U.S. 470 (1940), but individualized injury is essential to standing. Individualized injury is also essential to standing in cases where the claimed injury is to an interest of a noneconomic nature that is widely shared by others. *Sierra Club v. Morton*, —— U.S. ——, 92 S.Ct. 1361 (1972). The plaintiff in that case sought to challenge the action of the U. S. Forest Service in approving the construction of a large recreational area in Northern California. Plaintiff alleged that it had a "special interest in the conservation and sound maintenance of the national parks, game refuges, and forests of the county," 92 S.Ct. 1364, and claimed the agency action (1) allowed development of an area in excess of that allowed by 16 U.S.C. § 497, (2) destroyed timber and natural resources in violation of 16 U.S.C. §§ 41 and 43, (3) and violated the rules and regulations of the U. S. Forest Service and Department of the Interior. In affirming a judgment of dismissal for lack of standing, this Court stated at 92 S.Ct. 1367-1369:

> "The trend of cases arising under the APA and other statutes authorizing judicial review of federal agency action has been towards recognizing that injuries other than economic harm are sufficient to bring a person within the meaning of the statutory language, and towards discarding the notion that an injury that is widely shared is *ipso facto* not an injury sufficient to provide the basis for judicial review. We noted this development with approval in *Data Processing, supra*, at 154, 90 S.Ct., at 830, in saying that the interest alleged to have been injured 'may reflect "aesthetic, conversational, and recreational" as well as economic values.' *But broadening the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement*

that the party seeking review must have himself suffered an injury." (Emphasis added)

"....

"... But a mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved' within the meaning of the APA. The Sierra Club is a large and long-established organization, with an historic commitment to the cause of protecting our Nation's natural heritage from man's depredations. But if a 'special interest' in this subject were enough to entitle the Sierra Club to commence this litigation, there would appear to be no objective basis upon which to disallow a suit by any other bona fide 'special interest' organization however small or short-lived. And if any group with a bona fide 'special interest' could initiate such litigation, it is difficult to perceive why any individual citizen with the same bona fide special interest would not also be entitled to do so.

"The requirement that a party seeking review must allege facts showing that he is himself adversely affected does not insulate executive action from judicial review, nor does it prevent any public interests from being protected through the judicial process. It does serve as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome. That goal would be undermined were we to construe the APA to authorize judicial review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process. The principle that the Sierra Club would have us establish in this case would do just that."

Petitioners in the case sub judice can fare no better than the Sierra Club because they neither allege nor

prove an injury to themselves. The testimony of each of petitioners merely shows that they would prefer that more parks be developed in the immediate area of their residence rather than on Mustang Island. None of the petitioners testified or alleged that their use of existing park or recreational facilities would be diminished by the establishment of a park on Mustang Island. Petitioner Atwell disavowed any personal injury. Petitioner Walters has gotten the park which he testified that the acquisition of Mustang Island would prohibit. Petitioners Kennard, Walters, and Johnson "seek to do no more than vindicate their own value preferences" as to where and when parks should be acquired and developed. They, like everyone else, would like to see parks developed in their immediate areas. Theirs is a selfish interest shared by many, but not such an interest as would render them "adversely affected" or "aggrieved" within the contemplation of the APA as construed by this Court in *Sierra Club v. Morton.*

Petitioner Johnson's contention that the decision of the court below conflicts with the decisions in *Leuthold v. Camp,* 273 F.Supp. 695 (D. Mont. 1967) aff'd 405 F.2d 499 (9th Cir. 1969) and *Nuesse v. Camp,* 385 F.2d 694 (D.C. Cir. 1967) and that he has standing under those decisions because as Chairman of the Parks and Wildlife Commission and as State Liaison Officer he has primary responsibility for administering state and federal law relating to state park acquisition in Texas is without merit.

In both *Leuthold* and *Nuesse* a single state official was charged with supervisory power over state banks and charged with executing all laws relating to banks. Camp, the Comptroller of Currency of the United States, had ruled in both cases that national banks could establish branch banks in spite of the fact that

the state law in each instance prohibited branch banking. The state official in each of those cases was held to have standing to challenge the ruling of the Comptroller because it impinged upon his ability and duty to enforce the state law against branch banking, a right peculiar to the state official individually. Petitioner Johnson cannot cast himself in that mold. As Chairman of the Parks and Wildlife Commission, he has no singular responsibility to enforce any law or policy. He is merely one member of a three-member commission and has no greater vote or voice in the performance of the commission's functions than the other members of that commission. The actions of the commission are determined by majority vote of its members. Petitioner Johnson was outvoted in this instance and his position as chairman of the commission does not give him veto power. (See Appendix A and B). Neither can Petitioner Johnson gain standing through his designation as State Liaison Officer. The Texas Legislature has seen fit to designate the Parks and Wildlife Department as the state agency to cooperate with the federal government in the administration of the Land and Water Conservation Fund Act of 1965. (See Appendix C). The designation of the Department to act in that capacity is contemplated and authorized by 16 U.S.C. § 460*l*-8(d)(1). Petitioner Johnson's designation by the governor as State Liaison Officer for purposes of administering the Land and Water Conservation Fund Act of 1965 cannot override the Legislature's designation of the Parks and Wildlife Department as the official agency to perform that function. *Constantin v. Smith,* 57 Fwd. 227 (E.D. Tex. 1932) appeal dismissed 287 U.S. 378; *Brown Cracker & Candy Co. v. Dallas,* 104 Tex. 290, 137 S.W. 342 (1911).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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CERTIFICATE OF SERVICE

I, W. O. Shultz II, one of counsel for the respondent state officials in this cause, and a member of the Bar of the Supreme Court of the United States, hereby certify that three copies of the foregoing response to the petition for writ of certiorari have been mailed to the following attorneys of record in this cause:

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APPENDIX A

Article 978f-3a, Vernon's Texas Penal Code

Section 1. From and after the effective date of this Act, the Game and Fish Commission shall be reconstituted and known as the "Parks and Wildlife Department," which shall be under the policy direction of a Commission which shall consist of three (3) members, one (1) of whom shall be designated by the Governor as Chairman. The members of the Parks and Wildlife Commission shall be appointed by the Governor, which appointments shall be with the advice and consent of two-thirds (2/3) of the Members of the Senate present, if in Session, and if not in Session, the Governor shall appoint such Members and issue a commission to them as provided by law, and their appointment shall be submitted to the next Session of the Senate for their advice and consent in the manner that appointments to fill vacancies under the Constitution are submitted to the Senate. The Governor shall appoint the members of the Parks and Wildlife Commission, one (1) whose term shall expire February 1, 1965, one (1) whose term shall expire February 1, 1967, and one (1) whose term shall expire February 1, 1969, or until their successors are appointed and qualified. In case of a vacancy in Commission membership, the Governor shall appoint a replacement member to fill the unexpired term of the vacating member. A quorum for the dispatch of official business shall be two (2) members. Thereafter, the Governor shall appoint members for terms of six (6) years. The members of said Commission shall be reimbursed for their actual expenses incurred in attending meetings, and shall be paid a per diem as set out in the General Appropriations Act. The Commission shall meet as often as it deems necessary, but shall meet at least once every quarter of the year.

Sect. 2. The term of office of the present members of the Game and Fish Commission shall expire with the effective date of this Act; provided, however, that this provision shall not preclude the Governor from appointing one (1) or more members to the Parks and Wildlife Commission provided for in Section 1 of this Act.

Sec. 3. The Parks and Wildlife Commission shall have the power and authority to appoint an Executive Director who shall be the chief executive officer of the Parks and Wildlife Department and shall perform its administrative duties. Such Executive Director shall have authority to appoint such heads of divisions, game and fish wardens, park managers, and other employees as may be authorized by appropriations therefor and as may be deemed necessary for executing, administering and carrying out the duties and services authorized by law to be performed by the Parks and Wildlife Commission and the Parks and Wildlife Department. The Executive Director shall serve at the will of the Parks and Wildlife Commission. All other employees shall serve at the will of the Executive Director.

Sec. 4. The State Parks Board is hereby abolished and all powers, duties and authority heretofore vested in the State Parks Board are hereby transferred to the Parks and Wildlife Department provided for herein. The terms of office of the present members of the State Parks Board are hereby terminated and this provision shall not preclude the Governor from appointing one (1) or more members of the State Parks Board to the Parks and Wildlife Commission provided for in Section 1 of this Act.

Sec. 5. The Parks and Wildlife Department provided for herein shall exercise and perform all powers and duties heretofore vested in the Game and Fish

Commission prior to the effective date of this Act, and the State Parks Board prior to the effective date of this Act, and that portion of the program administered by the Parks and Wildlife Department which deals with the operation, maintenance, and improvement of State Parks shall be financed from the General Revenue Fund, the State Parks Fund, other funds as may be authorized by law, and such donations, grants, and gifts as may be received by said Department. No donations, grants or gifts accruing to the State of Texas or received by the Parks and Wildlife Department herein created, or now on hand in the presently constituted State Parks Department for the purpose of operating, maintaining, improving or developing State Parks, shall be used for any other purpose than the operation, maintenance, or developing of State Parks.

Sec. 6. The State of Texas assents to the provisions of the Acts of the U. S. Congress entitled "An Act to provide that the United States shall aid the states in wildlife-restoration projects, and for other purposes," approved September 2, 1937 (Public Law No. 415, 75th Congress), and "An Act to provide that the United States shall aid the states in fish-restoration management projects, and for other purposes," approved August 9, 1950 (Public Law No. 681, 81st Congress), and any amendments thereto, and the Parks and Wildlife Commission is authorized and empowered to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife-restoration and cooperative fish-restoration projects, as defined in said Acts of Congress, in compliance with said Acts, with rules and regulations promulgated thereunder by the Secretary of the Interior, and with enactments of Texas Legislatures; and no funds accruing to the State of Texas from hunting license fees, fishing license fees, commercial fishing boat license fees, oyster license fees,

net license fees, trawl license fees, seine licnse fees, or from any other fees collected by the former Texas Game and Fish Commission, or from any other funds received by the former Texas Game and Fish Commission including fines as a result of action taken by any court for a violation of any game or fish law; or receipts from the sale of shell, sand or gravel shall be diverted for any other purposes than for making necessary studies and management of the fish and game resources of this State and for the expansion and development of additional opportunities of hunting and fishing in State-owned land and waters for the benefit of the public wherever practicable and to embrace wherever feasible the principle of multiple use of our land and waters for better hunting and fishing opportunities. The special Game and Fish Fund shall be used for the purposes provided herein and for the purposes as now described by law and nothing shall be done to jeopardize or divert this Fund or any portion thereof including Federal aid as described in Section 6 of this Act.

APPENDIX B

Article 6070h, Vernon's Texas Civil Statutes

Texas Park Development Fund

Conditional enactment

Section 1. That this Act shall become effective and operate only upon conditions that House Joint Resolution No. 12 adopted by the 60th Legislature, 1967, and proposed as an amendment adding Section 49e to Article III of the Constitution of Texas, shall be adopted; and in that event, the effective date of this Act shall be the date on which the Governor declares such constitutional amendment adopted; otherwise, this Act shall be of no force or effect.

Definitions

Sec. 2. For the purposes of this Act the terms:

(a). "Department" means the Parks and Wildlife Department.

(b). "Commission" means the Parks and Wildlife Commission.

(c). "Chairman" means the Chairman of the Parks and Wildlife Commission.

(d). "Director" means the Executive Director of the Parks and Wildlife Department.

(e). "Bonds" shall mean the Texas Park Development Bonds authorized or permitted by the constitutional amendment submitted at the election held on November 11, 1967.

Governmental functions of Parks and Wildlife Department

Sec. 3. The Parks and Wildlife Department is hereby authorized to perform the governmental functions authorized by this Act.

Bond issues; resolution; proceeds; interest; form of bonds; registration and approval; replacement bonds

Sec. 4. The department by appropriate action, is hereby authorized from time to time to provide, by resolution of the commission, for the issuance of negotiable bonds in a total aggregate amount not exceeding $75,000,000. All of such bonds shall be issued on a parity and shall be called "State of Texas Park Development Bonds." The proceeds from the sale of any bond, or bonds, shall be used for the purpose of creating the Texas Park Development Fund provided for in the Constitution. At the option of the department, said bonds may be issued in one or several installments. The bonds of each issue shall bear such date as the department shall select, and shall bear a rate or rates of interest as may be fixed by the department, which interest may, at the option of the department, be payable annually or semi-annually; shall mature serially or otherwise not later than 40 years from their date; and may be made redeemable before maturity, at the option of the department, at such price or prices, and under such terms and conditions as may be fixed by the department in the resolution of the commission providing for the issuance of the bonds. The department shall determine the form of the bonds, including the form of any interest coupons to be attached thereto, and shall fix the denomination or denominations of said bonds and the place or places of the payment of the principal and interest thereon. Said bonds shall be executed on behalf of the department as general obligations of the State of Texas in the following manner: They shall be signed by the chairman and the director, and the seal of the department shall be impressed thereon, and they shall be signed by the Governor and attested by the Secretary of State of the State of Texas with the seal of the State of Texas impressed thereon. The resolu-

tion of the commission authorizing the issuance of any installment or series of bonds may prescribe the extent to which facsimile signatures and facsimile seals in lieu of manual signatures and manually impressed seals may be used in executing such bonds and appurtenant coupons. Interest coupons may be signed by the facsimile signatures of the Chairman and the Director. In the event any officer whose signature or facsimile signature appears on any bond, or whose facsimile signature shall appear on any coupon shall cease to be such officer before the delivery of the bond, the signature shall, nevertheless, be valid and sufficient for all purposes the same as if he had remained in office until such delivery had been made. The resolution of the commission may provide for registration of the bonds as to ownership and for successive conversion and reconversion from registered to bearer bonds and vice versa. Before any such bonds so issued are delivered to the purchasers, the record pertaining thereto shall have been examined by the Attorney General of Texas and said records and bonds shall be approved by him. After which approval, the bonds shall be registered in the office of the Comptroller of Public Accounts of Texas. All such bonds, after approval by the Attorney General of Texas, registration by the Comptroller of Public Accounts of Texas, and delivery to the purchasers, shall be incontestable and shall constitute general obligations of the State of Texas. Such bonds having been approved by the Attorney General and registered in the Comptroller's office shall be held, in every action, suit or proceeding in which their validity is or may be brought into question, valid and binding obligations of the State of Texas. In every action brought to enforce collection of such bonds or any rights incident thereto, the certificate of approval by the Attorney General and a certificate of registration by the Comptroller, or duly

certified copies thereof, shall be admitted and received in evidence as proof of their validity. All bonds issued in accordance with and under the provisions of this Act shall be, and are hereby declared to be negotiable instruments under the laws of this state. The department is fully authorized to provide for the replacement of any bond which might have become mutilated, lost, or destroyed.

Refunding bonds

Sec. 5. The department is hereby authorized to provide by resolution of the commission for the issue of refunding bonds for the purposes of refunding any bonds issued under the provisions of this Act and then outstanding, together with accrued interest thereon. The issuance of such refunding bonds, the maturities and all other details thereof, the rights of the holders thereof, and the duties of the department in respect to the same, shall be governed by the foregoing provisions of this Act in so far as the same may be applicable. The refunding bonds may be sold and the proceeds used to retire the outstanding bonds or may be used in exchange for the outstanding bonds.

Legal and authorized investments; security for deposit of state funds; taxation

Sec. 6. All state bonds hereafter issued pursuant to the provisions of this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and all other political subdivisions and public agencies of the State of Texas. Such state bonds when accompanied by all unmatured coupons appurtenant thereto shall be lawful and sufficient secu-

rity for all deposits of state funds, and all funds of any agency or political subdivision of the state, of counties, school districts, cities, and all other municipal corporations or subdivisions at the par value of said bonds. Such state bonds and the income therefrom, including the profits made in the sale thereof, shall at all times be free from taxation within this state.

Notice of sale of bonds; bids

Sec. 7. When the department shall have determined to sell a series of bonds, it shall be the duty of the department to publish at least one time not less than 10 days before the date of said sale an appropriate notice thereof. Said notice shall be published for such number of times as the department may determine in one or more recognized financial publications of general circulation published within the state and one or more such publications published outside the state. The department shall demand of bidders, other than the administrators of the state funds, that their bids be accompanied by exchange or bank cashier's check for such sum as it may consider adequate to be a forfeit guaranteeing the acceptance and payment for all bonds covered by such bids and accepted by the department. No installment or series of said bonds shall be sold for an amount less than the face value of all the bonds comprising such installment or series with accrued interest from their date, and all of such bonds shall be sold after competitive bidding to the highest and best bidder. The department shall have the right to reject any and all bids.

Entrance or gate fees; deposit of funds

Sec. 8. The department, from and after the effective date of this Act, and continuing so long as any of said bonds are outstanding, shall, wherever feasible, charge and collect entrance or gate fees to state park

sites. All income derived from the charging of entrance or gate fees, less any amounts necessary to pay for expenses incurred in making these charges, shall be deposited in a special fund with the state treasurer, and said amounts to be deposited shall hereinafter be referred to as net income.

Special funds

Sec. 9. For the purposes of administering the moneys provided for in this Act, there are hereby created the following special funds:

(a) The "Texas Park Development Fund," hereinafter called "Development Fund," into which shall be deposited the proceeds derived from the sale of the State of Texas Park Development Bonds, and which fund shall be used for the purpose of acquiring lands for state park sites and for developing said sites as state parks. The expense of issuing bonds shall be considered as part of such costs.

(b) The "Texas Park Development Bonds Interest and Sinking Fund," hereinafter called "Interest and Sinking Fund," to be used exclusively for the purpose of paying principal of and interest on the bonds herein provided as the same mature and exchange and collection charges in connection therewith. Accrued interest received in the sale of any bonds shall be deposited in the Interest and Sinking Fund and the commission may, in the resolution authorizing any series of bonds, provide for the appropriation from the proceeds thereof an amount which, together with any payment for accrued interest received in the sale of such bonds, shall be sufficient to pay interest coupons to mature on such series of bonds within the then current State of Texas fiscal year and to establish such reserves as shall be deemed appropriate by the commission. All net income

derived from entrance or gate fees to state park sites shall also be deposited to the Interest and Sinking Fund.

Transfer of funds out of treasury to pay principal and interest on bonds

Sec. 9-A. In the event the amount of moneys on hand in the Interest and Sinking Fund at the end of any fiscal year is insufficient to pay the interest becoming due and the principal maturing on the bonds during the ensuing fiscal year, the state treasurer upon certification by the director as of August 15 of each fiscal year shall transfer out of the first moneys coming into the treasury of the State of Texas, not otherwise appropriated by the Constitution, such amount as stipulated in the certification of the director as shall be required to pay principal and interest on such bonds during such fiscal year. After all bonds have been paid, the balance of the Interest and Sinking Fund shall be transferred to the "State Parks Fund" established by Chapter 168, Acts of the 42nd Legislature, 1931, General Laws, page 287, as amended by Chapter 431, Acts of the 47th Legislature, Regular Session, 1941[1]

Authority of Comptroller and Treasurer; mandamus

Sec. 9-B. The Comptroller of Public Accounts is hereby authorized and directed to make the transfers required under any provision of this Act. The Treasurer of the State of Texas is hereby authorized and directed to pay or cause to be paid principal and interest on bonds as they mature and come due. The performance of official actions by the Comptroller of Public Accounts and by the Treasurer of the State of Texas may be enforced through mandamus or other appropriate proceedings.

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[1]Article 6070a.

Investment of moneys in special funds

Sec. 9-C. Moneys in the Development Fund may be invested in obligations specified in Chapter 401, Acts of the 60th Legislature, and said Chapter 401 shall be applicable to such Fund and investments. Moneys in the Interest and Sinking Fund may be invested only in direct obligations of or obligations the principal and interest of which are guaranteed by the United States of America. Income from all such investments shall be deposited into the Interest and Sinking Fund.

Use of Development Fund; acquisition of property

Sec. 10. The Development Fund shall be used by the department for the purpose of acquiring state park sites from the United States or any governmental agency thereof, from any governmental agency of the State of Texas, or from any person, firm or corporation, by purchase, condemnation or otherwise, and for the purpose of improving, developing, beautifying, and equipping, said state park sites, and said department is hereby authorized to contract with any state or federal agency, or with any person, firm, or corporation for the purposes set out in this section. Property already devoted to a public use may be acquired in like manner; provided, that no real property belonging to the State or any political subdivision thereof, may be acquired without its consent. Condemnation authorized herein shall follow procedures as are now provided in the statutes of the State of Texas, including those provisions as provided for in Paragraph 3, Section 1 of Senate Bill No. 165, Chapter 112, 59th Legislature, Regular Session, 1965, and codified as Section 1 of Article 6081r of Vernon's Civil Statutes of Texas.

APPENDIX C

Article 6081r, Vernon's Texas Civil Statutes

Development of outdoor recreation resources

Parks and Wildlife Department as State Agency; cooperation with Federal Government; acquisition of land

Section 1. The Parks and Wildlife Department of the State of Texas is hereby designated as the State Agency to cooperate with the Federal Government in the administration of the provisions of any federal assistance programs for the planning, acquisition, operation, and development of the outdoor recreation resources of the state, including the acquisition of lands and waters and interests therein, and specifically to cooperate with the Federal Government in the administration of the provisions of the "Land and Water Conservation Fund Act of 1965" (Public Law 88-578)[1] effective January 1, 1965 and any amendments which may be added thereto from time to time, in the event no other State Agency is by law designated to cooperate with the Federal Government in the administration of the provisions of such Act or other Acts which may be hereafter enacted by the Congress.

The Parks and Wildlife Department is directed to enact and promulgate such rules and regulations as may be necessary to effect the cooperation as herein outlined and designated. The Parks and Wildlife Department is hereby authorized and directed to cooperate with the proper departments of the Federal Government and with all other departments of the state and local governments including as a part of a state plan water districts, river authorities, and special districts in outdoor recreation in the enforcement and ad-

[1] 16 U.S.C.A. §§ 460*l*-4 to 460*l*-11.

ministration of the provisions of the Federal Acts and any Amendments thereto and in compliance with the rules and regulations issued thereunder in the manner prescribed in this Act or as otherwise provided by law. It is the intent of the Legislature to add to the purposes, functions and duties of river authorities and water districts or other political subdivisions organized under Article III, Section 52, or Article XVI, Section 59, of the Constitution of Texas, and counties, to acquire lands for public recreation purposes, to construct thereon facilities for public use, to provide for the operation, maintenance and supervision of such public recreation areas, and to enter into agreements with other local, state or Federal Agencies for planning, construction, maintenance, and operation of such facilities, together with necessary access roads thereto, and to maintain adequate sanitary standards on the land and water areas as a part of and adjacent to such recreation areas.

The Parks and Wildlife Department, in order to accomplish the acquisition of lands under the programs outlined in this Act, may institute condemnation proceedings as are now provided in the Statutes of the State of Texas; however, if in the exercise of its power of eminent domain or police power, or any other power, it requires the relocation, raising, lowering, rerouting, or change in grade or alteration in the construction of any railroad, electric transmission, telegraph or telephone lines, conduits, poles, properties or facilities or pipelines, all such relocation, raising, lowering, rerouting, or changes in grade or alteration of construction shall be accomplished at the sole expense of the Parks and Wildlife Department of the State of Texas. The term "sole expense" shall mean the actual cost of such lowering, rerouting or change in grade or alteration of construction in providing comparable replacement

without enhancement of such facilities, after deducting therefrom the net salvage value derived from the old facility.

State-wide comprehensive plan

Sec. 2. The Parks and Wildlife Department is authorized and empowered to prepare, maintain, and keep up-to-date a state-wide comprehensive plan for the development of the outdoor recreation resources of the State of Texas; to develop, operate, and maintain outdoor areas and facilities of the state and to acquire land, waters, and interests in land and waters for such areas and facilities.

Participation in Federal program; contracts; records

Sec. 3. The Parks and Wildlife Department is authorized to apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any Federal program as now provided by law or as may hereafter be provided respecting outdoor recreation. The Parks and Wildlife Department is authorized to enter into contracts and agreements with the United States or any appropriate agency thereof for the purpose of planning, for acquisition of, and development of outdoor recreation resources of the state in conformity with the provisions of the "Land and Water Conservation Fund Act of 1965" and any Amendments thereto, and in conformity with any other Federal Act the purpose of which is the development of outdoor recreation resources of the state. The Department shall keep financial and other records relating to such programs and shall furnish to appropriate officials and agencies of the United States and of the State Government such reports and information as may be reasonably necessary to enable such officials

and agencies to carry out their responsibilities for the administration of such programs.

In order to obtain the benefits of any such programs, the Parks and Wildlife Department shall coordinate its activities with and represent the interests of all agencies and political subdivisions of the State of Texas including as a part of a state plan cities, counties, water districts, river authorities, and special districts in outdoor recreation having interests in the planning, development, acquisition, operation, and maintenance of outdoor recreation resources and facilities.

State funds; agreements on behalf of political subdivisions

Sec. 4. The Parks and Wildlife Department shall make no commitment or enter into any agreement pursuant to the authority under this Act until it has determined that sufficient funds are available to it for meeting the state's share, if any, of the cost of the project. It is the legislative intent that to such extent as may be necessary to assure the proper operation and maintenance of areas and facilities acquired or developed pursuant to any program participated in by the State of Texas under authority of this Act such areas and facilities shall be publicly maintained for outdoor recreation purposes.

The Parks and Wildlife Department may enter into and administer agreements with the United States or any appropriate agency thereof for plans, acquisition, operation, and development of projects involving participating Federal aid funds on behalf of any political subdivision or subdivisions of the State of Texas as set out in this Act provided that such political subdivision or subdivisions shall provide certification and give necessary assurance to the Department that they

have available sufficient funds to meet their share, if any, of the cost of the project and that the acquired or developed areas will be operated and maintained at the expense of such subdivision or subdivisions as set out in this Act for public outdoor recreation use.

Expenditure of Federal moneys; receipt and deposit of funds

Sec. 5. The Parks and Wildlife Department is authorized to accept and expend any Federal moneys allocated to the State of Texas for any projects or programs established for the purpose of carrying out the provisions of this Act and for administrative expenses and/or any other expenses incident to the administration of said projects or programs.

The Parks and Wildlife Department is authorized to receive and expend funds from the state, counties, and cities, and from any other source for the purpose of carrying out the provisions of this Act.

The Department shall deposit all such funds irrespective of source in the Special Fund hereinafter created in the State Treasury, and such funds shall be subject to withdrawal by the Parks and Wildlife Department and all such funds deposited in said Special Fund in the Treasury are hereby appropriated to the Parks and Wildlife Department.

State Land and Water Conservation Fund

Sec. 6. There shall be created in the State Treasury a Special Fund known as the "State Land and Water Conservation Fund" and all funds received from the Federal Government and/or from any other source for the purpose of paying the cost of planning, acquisition, operation, and development of outdoor recreation resources of the state and the administrative expenses incident to the projects or programs coming

within the scope of this Act shall be deposited in said Special Fund in the Treasury subject to withdrawals by the Parks and Wildlife Department.

Rules and Regulations

Sec. 7. The Parks and Wildlife Department is hereby authorized to promulgate rules and regulations governing the priority to be given projects submitted under the plan in pursuance to the provisions of this Act and within the limitations of the appropriation made for such purposes.

Personnel; costs of administration and operation of programs

Sec. 8. The Parks and Wildlife Department shall have the authority to employ such personnel as may be found necessary by the Executive Director and/or to make such arrangements as are necessary to efficiently carry out the purposes of this Act.

At such time as appropriations are made available for such purposes, the Parks and Wildlife Department is authorized to use such funds for the administrative costs and the operation of the programs established under and in pursuance to this Act or as it may hereafter be amended, including but not limited to the payment of salaries, travel expense, rent, bond premiums, postage, telephone and telegraph, freight, express, drayage, stationery, printed forms, office supplies, equipment, repairs, maintenance and miscellaneous and contingent expense.